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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Estate of MICHELLE A. LUND.	
WILLIAM S. LUND et al., Petitioners and Appellants, v. MICHELLE A. LUND, Objector and Respondent.	G047932 (Super. Ct. No. 30-2009-00317533) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Mary Fingal Shulte, Judge. Affirmed.

Bohm, Matsen and James G. Bohm for Petitioners and Appellants.

Loeb & Loeb and David C. Nelson for Objector and Respondent.

* * *

Petitioners William and Sherry Lund appeal from a judgment denying their petition to establish a conservatorship over William's daughter, Michelle Lund.[1] Petitioners contend the trial court abused its discretion in denying certain discovery motions and admitting Michelle's expert's testimony. Petitioners also contend the evidence was insufficient to support the judgment. We affirm.

FACTS

Background

Michelle is the granddaughter of Walt Disney. Her mother, Sharon Disney Lund, was Walt Disney's daughter. William is Michelle's father. He and Sharon were married in 1969 and divorced in 1977. Sharon subsequently passed away. Sherry is William's current wife and thus Michelle's stepmother. Michelle has a twin brother, Bradford Lund (Brad).

In September of 2009 Michelle suffered a ruptured brain aneurysm. The aneurysm required surgery, a lengthy hospital stay, and at one point her prognosis was "grave." Fortunately, she pulled through.

In the immediate aftermath of her aneurysm, Michelle's cognitive functions were severely impaired. She testified she could not hold a thought for more than 20 seconds, and acknowledged that her reasoning and memory were seriously compromised. Accordingly, she sought and obtained the voluntary appointment of Dominique Merrick as temporary conservator of her person, and L. Andrew Gifford and Robert L. Wilson as temporary coconservators of her estate. Merrick was Michelle's best friend dating back to their childhood. Gifford and Wilson were long-time friends of Michelle's, cotrustees with Michelle of her personal trust, and cotrustees and/or consultants to various Disney

[1] To avoid confusion, we refer to the parties by their first name. We intend no disrespect.

family trusts for Michelle's and Brad's benefit. Both Gifford and Wilson had been helping the Disney family with their finances in various capacities since the 1970's.

After being discharged from the hospital Michelle spent several months in an intensive rehabilitation program at Winways, a rehabilitation facility. Michelle's rehabilitation program targeted her thinking skills, physical skills, daily living skills, and community reintegration skills.

Her treating neuropsychologist at Winways was Dr. Lechuga, who met with Michelle approximately 20 times. Dr. Lechuga prepared a report at the conclusion of Michelle's rehabilitation based on having cared for her during the rehabilitation as well as a clinical interview and neuropsychological testing after the rehabilitation. Dr. Lechuga tested numerous neuropsychological measures in various categories, such as attention, language, list learning, shape learning, story learning, daily living memory, spatial skills, and executive functions. Dr. Lechuga found, among other things, that Michelle's "expressive and receptive language skills are intact. There are no areas of deficit in this domain." "Her high level problem solving or executive functions fall within an average to above average range." "There were no deficits in [Michelle's] high-level problem solving, judgment, and reasoning skills." Michelle's "memory-based skills, however, represent her areas of primary weakness. Specifically, her delayed memory for simple verbal information, such as words, fell within an impaired range, overall. She struggled to recall information that was presented 20 to 30 minutes before being tested. [Michelle's] memory for daily living activities, such as medications, names, addresses, and phone numbers, fell within an impaired range." The report concluded that Michelle could compensate for her memory deficiencies with various techniques and that the handicap associated with her sort of condition is "usually quite low and manageable."

After having completed her rehabilitation program, the court terminated the temporary conservatorships at Michelle's request in June of 2010. Six months later, William and Brad filed the current petition for a conservatorship of Michelle's person

and estate. Brad later dismissed his petition, Sherry joined, and the petition was amended to seek a conservatorship solely over Michelle's estate.

Alleged Evidence of Michelle's Lack of Capacity to Manage Her Affairs

Petitioners contend Merrick, Gifford, and Wilson are exerting undue influence over Michelle and that she is susceptible to their undue influence due to brain damage from the aneurism. Petitioners base their contention on the following evidence.

According to petitioners' expert, who never examined Michelle (more on that below), the aneurism left Michelle with permanent brain damage to her frontal lobes, resulting in impaired judgment and heightened susceptibility to undue influence. Merrick, Gifford, and Wilson, according to William, have taken advantage of Michelle in her weakened state by isolating her from William and the rest of Michelle's family and encouraging certain self-dealing transactions.

As examples of the alleged effort to isolate Michelle, petitioners contend that prior to the aneurism, unlike afterwards, Michelle enjoyed a very positive relationship with her family. At the time of Michelle's aneurysm, William was a cotrustee with Gifford and Wilson of various Disney family trusts for Michelle's and Brad's benefit. He was also the agent to make medical decisions for Michelle under her advanced health care directive. (Prob. Code, § 4701.) And he was the co-manager and 1 percent owner of an investment company, Mal LLC, which was owned 99 percent by Michelle.

While Michelle was in the hospital, however, and while she was still cognitively impaired, she signed documents removing William as the agent to make health care decisions for her under her advance health care directive. Michelle's then guardian *ad litem* permitted her to sign these documents. Michelle's conservators also removed William from Michelle's residential community gate access list, preventing William from visiting Michelle after she was discharged from the hospital. And

Michelle's conservators hired body guards to watch Michelle 24 hours a day at a considerable expense to Michelle, ostensibly to protect her from William and Sherry.

While Michelle was recovering, Gifford, Wilson, and First Republic Trust Company, as trustees of one of Michelle's trusts, filed suit to have William removed as trustee of that trust. The lawsuit resulted in a settlement wherein William agreed to step down as trustee, but received monetary compensation from one of Brad's trusts. Gifford and Wilson, acting as conservators, also removed William as manager of Mal, LLC, because they uncovered various loans William had made to himself or entities owned by him, which allegedly had not been paid back. On the advice of Gifford, Wilson, and Doug Strode (a trustee of one of Michelle's trusts), Michelle authorized a lawsuit filed against her father, alleging he had taken more money than he was entitled to under a profit distribution agreement concerning Mal, LLC investments. Gifford and Wilson became managers in William's stead, and Strode was hired as an employee. After the temporary conservatorship was lifted, Gifford, Wilson, and Strode began receiving $5,000 per month each as compensation for managing Mal, LLC, and Michelle paid each of them approximately $60,000 in retroactive payments for their assistance managing the business while Michelle was under a conservatorship.

William further contends Michelle has been manipulated to pay litigation expenses for various people. For example, Sherry's daughter and Brad sued Wilson's wife for battery, and Michelle paid all of Wilson's wife's legal fees. Michelle paid the legal fees of Merrick, Wilson, and Gifford when they were deposed in this action. And Michelle is fully funding a conservatorship petition in Arizona regarding her brother Brad, including not just her own expenses but those of several copetitioners interested in seeing Brad placed under conservatorship. That petition claims Brad is incompetent. Michelle testified, however, that she believes Brad in fact is competent and would never join litigation that could result in Brad being institutionalized.

Finally, at trial William presented evidence that Michelle did not know precisely how much money was in each of her trusts (which totaled about $200 million), or how much income she received from the various trusts (which totaled approximately $1 million per year). Also, at one point she testified she received a $25 million distribution for her 35th birthday, when, in fact, she received $35 million. (She correctly recited, however, that her 40th birthday distribution was $25 million.) Finally, Michelle gave inconsistent testimony regarding the amount of her personal (i.e. non-trust) assets.

Michelle's Response

Michelle, for her part, denies that she had a positive relationship with her family prior to the aneurism. She submitted evidence, for example, of an e-mail that Sherry wrote to Michelle several months prior to the aneurism. The e-mail was a lengthy diatribe about Michelle allegedly mistreating some of the family property and more generally a guilt trip about how Michelle was hurting William's feelings. Michelle further claimed that prior to the aneurism she suspected her father was guilty of financial improprieties. She testified, for example, that before the aneurism she had asked William for a full accounting of his management of Mal, LLC, but that William had not complied with the request, deepening Michelle's suspicions. Finally, with respect to third party legal fees, Michelle testified she paid them because they were either incurred in connection with this lawsuit, or because she believed in the justice of the cause and felt it was the right thing to do.

With respect to the bodyguards, Michelle's witnesses testified these actions were taken based on a few concerns. First, Merrick, who was staying with Michelle at her house, felt more comfortable with a security detail present. Second, there was a rumor circulating that Sherry, William's wife, had hired a hit man to kill her ex-husband. Third, the conservators were concerned William was going to kidnap Michelle and take her back to Arizona, where William lived, against Michelle's desire to stay near her home

in Newport Beach. William admitted wanting to take Michelle back to Arizona, but contended Michelle wanted that.

With respect to the lawsuits instituted against William, Wilson and Gifford testified that they believed that William had taken millions of dollars of illegal kickbacks and other improper payments. William denies these allegations.

Finally, with respect to Michelle's knowledge of her finances, she claims her finances are managed by others, not by her personally, and that she knows where to go to obtain detailed information about her finances. She also notes that she has at least six different trusts for her benefit and she receives more income from these trusts than she spends or needs. Michelle concludes any confusion about the specifics of her assets is, therefore, not evidence of incapacity.

The Trial Court's Ruling

After a bench trial the court denied the conservatorship petition. In its written ruling, the court noted it was "impressed with the nature and quality of Michelle's testimony. While it appears that, per her own testimony, she is influenced by others, the Court cannot find from all of the evidence that she requires a conservatorship over her estate." "Additionally, the Court carefully assessed the nature and quality of the testimony of the witnesses described by petitioners as Michelle's 'handlers' [i.e., Merrick, Wilson, and Gifford]. The Court found them to be credible witnesses, particularly Mr. Wilson and Mr. Gifford. The Court's own investigator . . . recommended against establishment of a conservatorship. [¶] The burden of proof for establishing a conservatorship is a clear and convincing standard. . . . Weighing the evidence and the credibility of the witnesses, the Court finds that petitioners have not met their heightened burden of proof." Petitioners timely appealed from the judgment.

DISCUSSION

I. The Court Did Not Abuse Its Discretion in Denying Petitioners' Requests for a Mental Examination, Nor in Permitting Dr. Lechuga's Testimony

Petitioners' initial two arguments on appeal are somewhat intertwined, so we address them together. Petitioners contend the court abused its discretion in denying their repeated requests to permit a mental examination of Michelle by a neuropsychologist; in addition, or perhaps in the alternative, they claim the court should have excluded Dr. Lechuga's testimony. The thrust of petitioners' argument, which has some surface appeal, is that the court cannot both deny their ability to have their expert evaluate Michelle's mental state, but then permit Michelle to put on her own expert who evaluated her mental state. As we explain below, however, the court was within its discretion in initially denying the motion for a mental examination, and certain tactical choices petitioners made undermined both their renewed request for a mental examination and their objection to Dr. Lechuga's testimony.

Petitioners face a steep standard of review. To begin with, petitioners faced a heavy burden in the trial court to justify a mental examination. Code of Civil Procedure section 2032.320, subdivision (a), requires "good cause" to conduct a mental examination. "[T]he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary." (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 388; *Sporich v. Superior Court* (2000) 77 Cal.App.4th 422, 427 [applying the *Greyhound* standard to the good cause requirement for a mental examination].) "[W]hen the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the [Code of Civil Procedure] section 2017 standard [now section 2017.010]. The party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two

competing interests are carefully balanced. (*Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-1854.) In demonstrating this compelling need, the moving party must "produce specific facts justifying discovery. . . ." (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 840.) "The requirement of a court order following a showing of good cause is doubtless designed to protect an examinee's privacy interest by preventing an examination from becoming an annoying fishing expedition." (*Ibid.*)

On the other hand, "The constitutional right of privacy does not provide absolute protection against disclosure of personal information; rather it must be balanced against the countervailing public interests in disclosure. [Citation.] For example, there is a general public interest in '"'facilitating the ascertainment of truth in connection with legal proceedings'"' [citations] and in obtaining just results in litigation [citation]. . . . If these public interests in disclosure of private information are found to be 'compelling,' the individual's right of privacy must give way and disclosure will be required." (*Hooser v. Superior Court* (2000) 84 Cal.App.4th 997, 1004.)

Compounding that difficult requirement, petitioners face an abuse of discretion standard on appeal. (*Ombudsman Services of Northern California v. Superior Court* (2007) 154 Cal.App.4th 1233, 1241 ["We review discovery rulings under the abuse of discretion standard"]; *Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1476 ["A trial court's ruling on the admissibility of evidence is generally reviewed for abuse of discretion"].) "Where a trial court has discretion to decide an issue, it will generally be reversed on appeal only where it clearly appears a prejudicial abuse of discretion in fact occurred. [Citation.] In other words, a reviewing court will only interfere with a trial court's exercise of discretion where it finds that under all the evidence, viewed most favorably in support of the trial court's action, no judge could have reasonably reached the challenged result. [Citation.] '[A]s long as there exists "a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be . . . set aside . . . ."' [Citations.] More specifically, a trial court's

exercise of discretion will not be disturbed unless the record establishes it exceeded the bounds of reason or contravened the uncontradicted evidence [Citation], failed to follow proper procedure in reaching its decision [Citation], or applied the wrong legal standard to the determination [Citation]." (*Conservatorship of Scharles* (1991) 233 Cal.App.3d 1334, 1340.)

a. The Court Did Not Abuse its Discretion in Denying Petitioners' Initial Motion to Compel a Mental Examination

The evidence presented in connection with petitioners' initial motion for a mental examination, though not as well developed as the evidence at trial, essentially mirrored the evidence at trial and was equally in conflict. Perhaps recognizing the difficulty this presents, petitioners do not contend the court abused its discretion in weighing the competing evidence and balancing the competing interests of Michelle's privacy versus petitioners' need for evidence. Instead they contend the court altogether failed to perform such a balancing; in other words, that the court failed to apply the correct legal standard. Petitioners do not support that claim with any record citation, however. Rather, they focus on the fact that the court nowhere articulated its balancing of the parties' interests: "The mere fact that there is no evidence of the balancing supports the position that the trial court did not balance these interests."

Petitioners' argument is flawed for two reasons.

First, a fundamental rule of appellate review is that the order under review is presumed correct. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) And there is a statutory presumption that an official duty has been regularly performed. (Evid. Code § 664.) "[S]cores of appellate decisions, relying on this provision, have held that 'in the absence of any contrary evidence, we are entitled to presume that the trial court . . . properly followed established law.'" (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.) It is not enough, therefore, to simply observe the *absence* of any indication that the trial court

applied the correct legal standard. Instead, "error must affirmatively appear on the record." (*People v. Gillispie* (1997) 60 Cal.App.4th 429, 434.)

Second, our review of the record indicates the court did balance the parties' competing interests. It noted, for example, the difficulty petitioners would have in proving their case without a mental examination, stating, "Playing devil's advocate, going back to [petitioners'] side, they're kind of stymied so far as discovery because of the prior order. I'm not sure how they could prove their case without an expert." The court also stated it was "concerned about [petitioners'] allegations." Thus the court considered petitioners' need to obtain evidence. It also considered Michelle's privacy interests, stating the evidence presented did not "rise[] to the level of good cause to . . . allow [petitioners' expert] to spend all this time with [Michelle]." And while the court denied the mental examination request, it did permit petitioners to depose Michelle, Merrick, and Gifford, demonstrating a balanced resolution to petitioners' request.

In contending the silence of the record justifies reversal, petitioners rely heavily on *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347 (*Planned Parenthood*). In *Planned Parenthood* an abortion protestor sued Planned Parenthood Golden Gate for defamation and battery, claiming Planned Parenthood Golden Gate interfered with plaintiff's lawful protesting. (*Id.* at p. 351.) Plaintiff moved to compel the disclosure of the identity and contact information of various volunteers and staff members at Planned Parenthood Golden Gate. (*Id.* at pp. 351-352.) The trial court granted the motion (*id.* at p. 352), but the Court of Appeal reversed. It found the constitutionally protected privacy interests of the volunteers and staff members far outweighed any need to compel discovery of the evidence. (*Id.* at p. 369.) In concluding the trial court abused its discretion, it stated the trial court "failed to balance" privacy interests against the need for disclosure. (*Id.* at p. 370.) Unlike here, however, the record supported the notion that the trial court applied an incorrect legal standard: "Real parties in interest, who characterize this matter as a routine discovery dispute, maintain that no

constitutional issue is presented by this case. The record suggests that the referees and trial court may have agreed with them. We do not." (*Id.* at p. 358.) Elsewhere the court stated, "[T]he [trial] court may not have recognized the overriding privacy interest at issue in this case at all." (*Id.* at p. 370.) Because the record here does not indicate the court applied the wrong legal standard, *Planned Parenthood* is inapposite.

The presumption that the court applied the correct legal standard, together with the lack of any indication that the court applied the wrong standard, compel us to conclude the court did not abuse its discretion.

b. The Court Did Not Abuse Its Discretion in Denying Petitioners' Second Request for a Mental Examination

Although the court denied petitioners' initial request for a mental examination, recognizing petitioners' need for discovery, the court permitted petitioners to depose Michelle, Merrick, and Gifford. After taking those depositions, petitioners made a second request for a mental examination, which the court also denied.

Petitioners contend the court abused its discretion by denying the second request for a mental examination on "procedural grounds." In particular, petitioners interpret the court's order denying the request as based on a failure to allege new or different facts, circumstances, or law not in existence as of the date of the first denial, in conformity with Code of Civil Procedure section 1008, subdivision (b).

Petitioners' interpret the court's order too narrowly. Although the court's order mentioned the requirements of Code of Civil Procedure section 1008, it went on to note that additional depositions took place since the prior order. It then stated, "These depositions do not give rise to good cause for the discovery requested." Although the court noted that the renewed motion is based on the same facts and arguments as before, it concluded, "Moving parties have not established good cause to grant [the] motion on the eve of trial." Accordingly, the court listed both procedural and substantive grounds

for denying the motion. Petitioners do not contend the ruling was an abuse of discretion on the merits, thus we presume the ruling is correct. Consequently, even if the court were wrong on the procedural grounds, we must affirm.

c. The Court Did Not Abuse Its Discretion in Denying Petitioners' Third and Fourth Requests for a Mental Examination, Nor in Admitting Dr. Lechuga's Testimony

The court's denial of petitioners' third and fourth requests for a mental examination, and its admission of Dr. Lechuga's testimony over petitioners' objection, presents a more difficult issue. The order of events is relevant to our resolution, so we set it forth in some detail.

On the Friday before trial, as part of the exchange of trial exhibits, Michelle gave petitioners a copy of Dr. Lechuga's report, which extensively discussed Michelle's neuropsychological functioning. Arguably, this waived any privacy right Michelle had to oppose a mental examination. Trial began, and petitioners presented the expert testimony of a neuropsychologist who, over Michelle's objection, preemptively criticized Dr. Lechuga's report, prior to the report being admitted into evidence, and prior to Dr. Lechuga testifying. After petitioners rested, they renewed their request for a mental examination (the third request). The court responded, "Never heard of that motion in the middle of trial, so I'm assuming it's opposed." It was opposed, "[s]o it's denied."

Michelle then put on her case and called Dr. Lechuga to testify, at which point the following exchange took place:

"[Petitioners' counsel:] And, your honor, we move to exclude Dr. Lechuga's testimony. . . . [¶] . . . [¶] . . . The first we ever heard of him was the Friday before trial. We were given his report. It was never produced in discovery, and they claimed they haven't put her mental competency at issue, and so to the extent your honor would entertain the testimony, we would request leave to take" a mental examination. (This is the fourth request.)

"The Court: Let me ask, was there a demand under [Code of Civil Procedure section] 2034 to exchange expert witness lists?

"[Michelle's counsel:] There was a demand that was about two weeks late, and so we did not comply.

"The Court: So there was no — there was not a contemporaneous exchange of experts. Which isn't required.

"[Michelle's counsel:] That's correct.

"The Court: Okay. And he was listed on your witness list?

"[Michelle's counsel:] Listed on my witness list."

"The Court: I'm just not saying [*sic*] a statutory basis or case law basis for excluding his testimony, particularly since [Michelle's counsel] objected and I overruled the objection to your bringing up with Dr. Sbordone [petitioners' expert] right out of the box Dr. Lechuga's opinions. He had a lot of critiques of his report. So I'm overruling your objection without prejudice to specific objections any testimony he might have, but he can testify. It's true they don't proffer her mental status in — as far as being a contested issue, but your side did and brought in Dr. Sbordone to testify about her mental state. So I think it's only fair to let Dr. Lechuga respond."

As a result of this exchange, petitioners were left in the undesirable position of facing off against Michelle's treating neuropsychologist, who had examined Michelle extensively, yet being unable to have their own expert examine Michelle. Nonetheless, we think these rulings were within the court's discretion based on two tactical decisions petitioners made.

First, petitioners received Dr. Lechuga's report the Friday before trial, yet petitioners chose not to request a mental examination *before* trial began on the following Monay, at a time when petitioners could have requested a trial continuance, but instead waited until the middle of trial to make that request. Petitioners do not cite, and we have not found, any case holding a trial court abused its discretion by not interrupting trial

midway through to permit additional discovery. Where petitioners were aware of the circumstances justifying a renewed request for a mental examination before trial began, but chose to wait until the middle of trial to raise the issue, we cannot conclude the trial court abused its discretion.

Second, petitioners chose to preemptively attack Dr. Lechuga's report *before* making any objection to the admissibility of Dr. Lechuga's report or testimony. Arguably, petitioners' remedy for Michelle standing on her objection to a mental examination during discovery, but then seeking to introduce her treating physician's testimony at the last minute, was to exclude Dr. Lechuga's report and testimony, not to interrupt the trial for additional discovery. (See, e.g., *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566 [defendant raised self-incrimination privilege during discovery, then tried to waive it and testify at trial; court excluded the testimony].) Petitioners, by having their own expert discuss and criticize Dr. Lechuga's report, however, waived any objection to Dr. Lechuga testifying. Of course the court needed to hear Dr. Lechuga's response to petitioners' expert's criticism of Dr. Lechuga's report.

Petitioners could have avoided this waiver by simply objecting to Dr. Lechuga's testimony and report prior to eliciting testimony about the report. One option petitioners chose not to take advantage of was to move *in limine* to exclude Dr. Lechuga's testimony and report. That would have given the court an opportunity to rule on the objection prior to receiving any evidence of Dr. Lechuga's findings. And if the motion had been denied, petitioners could have preserved their objection and still had their expert preemptively criticize Dr. Lechuga. (*People v. Morris* (1991) 53 Cal.3d 152, 190 [proper motion *in limine* preserves an objection for appeal]; disapproved on a different ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.) Another option was to avoid any preemptive criticisms, then object when Michelle called Dr. Lechuga, and, if the objection were overruled, address Dr. Lechuga's findings in petitioners' rebuttal case. With the tactic petitioners took, however, the court had little choice but to

admit Dr. Lechuga's testimony. Accordingly, we conclude the court did not abuse its discretion.

II. The Court did Not Abuse Its Discretion in Denying Financial Discovery

Petitioners also claim the court abused its discretion in denying financial discovery. Petitioners' second motion for a mental examination was, as the trial court noted, "[t]wo very discrete motions folded into one . . . . Fourteen pages are devoted to the request for a mental examination; two paragraphs at the end address the argument that 'a review of Michelle's finances to reveal the extent of the abuse is in her best interest.' Eighteen categories of documents are sought to be produced, 'within 30 days of the services of this request.'" According to petitioners' counsel, the 18 document requests were drawn narrowly in response to a prior ruling that petitioners' prior document requests were overbroad. Oddly, the requests had not been served, but were instead "proposed" requests. Apparently petitioners were seeking an advance ruling on Michelle's expected objections to the requests.

The court heard the motion on June 7, 2012, and the trial date was July 2, 2012. Thus responses to the document requests would have been due after the trial date, which the court ruled was untimely. Petitioners claim this was an abuse of discretion.

Petitioners argue the reason the requests would have been due after the trial date was because the trial court postponed the hearing date on the motion. The motion was initially set to be heard May 17, 2012. The parties then stipulated, and the court agreed, to move the hearing to May 31, 2012, still more than 30 days before trial. Included in that stipulation was an agreement to extend the discovery cutoff until June 15, 2012. We are told the parties appeared on May 31, 2012, and the trial court continued the hearing until June 7, 2012, which was less than 30 days before trial.

The problem with petitioners' argument is the discovery cutoff was 30 days *before* trial — June 4, 2012 — meaning *responses* to the discovery requests had to be due

by that time. (Code Civ. Proc., §§ 2024.010, 2024.020, subd. (a).) The motion was set to be heard on May 17, 2012, which, assuming the motion had been granted on that date, would not have allowed Michelle 30 days to respond prior to the discovery cutoff. Even when the parties agreed to move the hearing date to May 31, 2012, and extend the discovery cutoff to June 15, 2012, there still was not 30 days to respond. Notably, petitioners did not seek an order shortening the time period for Michelle to respond. (See Code Civ. Proc., § 2031.260, subd. (a).) Accordingly, petitioners' discovery requests were untimely.

III. Substantial Evidence Supports the Judgment

Finally, petitioners contend there is insufficient evidence to support the judgment, but their argument is a blatant attempt to have us reweigh the evidence. "With rhythmic regularity it is necessary for us to say that where the findings are attacked for insufficiency of the evidence, our power begins and ends with a determination as to whether there is *any* substantial evidence to support them; that we have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom. No one seems to listen." (*Overton v. Vita-Food Corp.* (1949) 94 Cal.App.2d 367, 370, disapproved on a different ground in *Parsons v. Bristol Development Co*. (1965) 62 Cal.2d 861, 866, fn. 2.)

Michelle was entitled to "a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions." (Prob. Code, § 810, subd. (a).) To rebut that presumption, petitioners' had to prove Michelle was "substantially unable to manage . . . her own financial resources or resist fraud or undue influence . . ." (Prob. Code, § 1801, subd. (b).) To do this, they needed to prove one of the mental deficits listed in Probate Code section 811, subdivision (a), and then prove the deficit(s) "significantly impairs the person's ability to

understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question." (Prob. Code, § 811, subd. (b).)

We need not delve far into the evidence to easily conclude substantial evidence supports the judgment. The only mental deficit that was conclusively proven was Michelle's memory problems, which is a relevant mental deficit. (Prob. Code, § 811, subd. (a)(2)(A).) But Dr. Lechuga specifically opined that this issue would not prevent Michelle from handling her own affairs, and that with the compensatory strategies she learned at Winways her memory was functional for daily living. Indeed, Dr. Lechuga opined, based on his extensive experience treating and analyzing Michelle, that Michelle has the ability to handle her own affairs and resist undue influence. The court was entitled to believe this evidence, and it supports the judgment.

DISPOSITION

The judgment is affirmed. Michelle shall recover her costs on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.